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Pruitt's Bad Pebble Precedent

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Scott Pruitt has done good work reining in his predecessor's regulatory overreach. But that only makes the EPA Administrator's decision late last week to rubber stamp a violation of due process toward a mine proposal in Alaska all the more disappointing.

The Environmental Protection Agency said it will no longer seek to withdraw the Obama Administration's pre-emptive veto of the proposed Pebble copper and gold mine in southwest Alaska. The Obama EPA issued that unprecedented veto in February 2014, blocking Pebble's progress through the regular Clean Water Act process in which a company files for permits and receives an environmental review from the Army Corps of Engineers. EPA's job is to weigh in at the end of the review, not short-circuit the application.

EPA says that although the proposed veto will remain in place, the agency will allow the Pebble Limited Partnership an additional three years to navigate the Corps process. This is less generous than it sounds. Pebble had already won that right in May 2017, when the EPA settled litigation Pebble brought that had exposed EPA's phony science and the collaboration by EPA employees with anti-mine activists and native tribes to sabotage the project. As part of that settlement, EPA agreed to start formally withdrawing the veto.

Mr. Pruitt's about-face is the sort of arbitrary diktat that undermines capital investment. Shares in Northern Dynasty Minerals, which owns Pebble, fell 21% on Monday, the first trading day after the Pruitt announcement. EPA says its decision to maintain the veto is based on more than "one million comments" it has received since this summer that mostly oppose the mine, and Mr. Pruitt's judgment that "any mining projects in the region likely pose a risk to the abundant natural resources that exist there."

Based on what analysis? The Obama EPA ginned up a phony study based on a hypothetical mine to create a worst-case scenario and justify its veto. Even if the public comments are genuine (and not part of a spam campaign), they are informed by a faulty, partisan federal effort to discredit the mine.

Pebble didn't file its permit application until Dec. 22, so the Pruitt EPA can't possibly have analyzed the actual proposal. Mr. Pruitt is prejudging the project as egregiously as did the Obama EPA, even as he pays lip service to due process. And so much for Mr. Pruitt's commitment to federalism, since the state of Alaska owns the mine site and is again getting rolled by the feds.

The broader concern is Mr. Pruitt's embrace of a pre-emptive EPA veto power. This makes the agency a superregulator able to kill any mine, pipeline, bridge or oil well before companies can make a case, and regardless of support by one of the 50 states. The next Democratic EPA will take Mr. Pruitt's precedent and run with it. Many lawyers argue that EPA lacks the statutory power to pre-empt the process, and EPA had never previously exercised a veto like it did with Pebble. If Mr. Pruitt now thinks the EPA has such pre-emptive power, Republicans in Congress need to know.

We take no position on the merits of the Pebble mine, but regulatory due process matters. We thought Mr. Pruitt believed in it too.